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13 LinkedIn Corporation

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 3taps, Inc.,
19 Plaintiff,
20 vs.
21 LinkedIn Corporation,
22 Defendant.
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Case No. 18-cv-00855-EMC

**DEFENDANT LINKEDIN'S REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF ITS MOTION TO DISMISS
AMENDED COMPLAINT**

Judge: Hon. Edward M. Chen
Hearing Date: April 7, 2022
Hearing Time: 1:30 p.m.
Ctrm: Courtroom 5
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE**
 2 **NOTICE THAT** LinkedIn Corporation (“LinkedIn”) hereby requests that the Court take judicial
 3 notice of the documents listed below and attached hereto, pursuant to Rule 201 of the Federal
 4 Rules of Evidence and Rule 10(c) of the Federal Rules of Civil Procedure. This request is made
 5 in support of LinkedIn’s Motion to Dismiss Plaintiff’s Amended Complaint.

- 6 1. Final Judgment and Permanent Injunction Against 3taps, Inc.; Hard Yaka, Inc.; and
 7 Robert G. Kidd, *Craigslist, Inc. v. 3taps, Inc. et al.*, No. 3:12-cv-03816-CRB (N.D.
 8 Cal., June 30, 2015) (Dkt. 272), a true and correct copy of which is attached hereto as
 9 **Exhibit 1.**
- 10 2. First Amended Complaint, *Craigslist, Inc. v. 3taps, Inc. et al.*, No. 3:12-cv-03816-
 11 CRB (N.D. Cal., June 30, 2015) (Dkt. 35), a true and correct copy of which is attached
 12 hereto as **Exhibit 2.**
- 13 3. Complaint, *hiQ Labs, Inc. v. LinkedIn Corp.*, No. 3:17-cv-03301-EMC (N.D. Cal.,
 14 June 07, 2017) (Dkt. 1), a true and correct copy of which is attached hereto as
 15 **Exhibit 3.**
- 16 4. Order Granting Plaintiff’s Motion for Preliminary Injunction, *hiQ Labs, Inc. v.*
 17 *LinkedIn Corp.*, No. 3:17-cv-03301-EMC (N.D. Cal., August 14, 2017) (Dkt. 63), a
 18 true and correct copy of which is attached hereto as **Exhibit 4.**
- 19 5. January 16, 2018 letter from 3taps’s counsel to LinkedIn’s counsel, a true and correct
 20 copy of which is attached hereto as **Exhibit 5.**
- 21 6. January 24, 2018 letter from LinkedIn’s counsel to 3taps’s counsel, a true and correct
 22 copy of which is attached hereto as **Exhibit 6.**
- 23 7. 3Taps, Inc.’s Administrative Motion to Consider Whether Cases Should Be Related,
 24 *hiQ Labs, Inc. v. LinkedIn Corp.*, No. 3:17-cv-03301-EMC (N.D. Cal., Feb. 20, 2018)
 25 (Dkt. 96), attached hereto as **Exhibit 7.**
- 26 8. Order Granting Non-Party 3taps, Inc.’s Administrative Motion to Consider Whether
 27 Cases Should Be Related, *hiQ Labs, Inc. v. LinkedIn Corp.*, No. 3:17-cv-03301-EMC
 28 (N.D. Cal., Feb. 22, 2018) (Dkt. 102), attached hereto as **Exhibit 8.**

ARGUMENT

The Exhibits hereto are partially or wholly incorporated by reference into the Complaint and are therefore matters of which this Court may take judicial notice under Federal Rule of Civil Procedure 10 and/or are also judicially noticeable under Rule of Evidence 201. Accordingly, LinkedIn requests that this Court consider the materials in support of its motion to dismiss.

I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF DOCUMENTS REFERENCED IN THE COMPLAINT UNDER RULE 10(C).

The Court should take judicial notice of Exhibits 3, 5, and 6 pursuant to Federal Rule of Civil Procedure 10(c). Under Rule 10(c), a court may take judicial notice of documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleadings. Fed. R. Civ. Pro 10(c); *Graham v. U.S. Bank, N.A.*, No. 13-CV-01613 NC, 2013 WL 2285184, at *4 (N.D. Cal. May 23, 2013).

Exhibit 3 is the complaint filed in the Northern District of California in the matter of *hiQ Labs, inc. v. LinkedIn Corp.* Certain contents of the hiQ complaint are alleged in paragraphs 4, 10, and 14 of 3taps's Amended Complaint, because 3taps asserts that it intends to scrape in the same manner and therefore seek the same declaratory judgment as sought in the hiQ complaint. *See* Am. Comp. ¶¶4, 10, 14. Further, there can be no dispute as to the authenticity of the filed version of the complaint. Accordingly, Exhibit 3 should be judicially noticed pursuant to Rule 10(c). LinkedIn is seeking notice of the hiQ complaint only to explain the scope of 3taps's factual allegations, and not for purposes of the truth of any allegation contained therein. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir.2001).

Exhibit 5 is a letter from 3taps's counsel to LinkedIn's counsel declaring 3taps's alleged decision to begin scraping data from LinkedIn webpages. Exhibit 6 is a response letter from LinkedIn's counsel to 3taps's counsel asserting that 3taps is not authorized to access LinkedIn's website and servers. The contents of these letters are referenced extensively throughout the Amended Complaint. *See* Am. Comp. ¶¶2-3, 17-18, 23, 27, 32. 3taps has copies of these letters so there should be no question as to their authenticity. The contents of the letters can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

1 Accordingly, Exhibits 5 and 6 should be judicially noticed pursuant to Rule 10(c) and Federal
2 Rule of Evidence 201(b)(2).

3 Taking judicial notice of these documents is further supported by the doctrine of
4 incorporation by reference. Under this doctrine, a defendant may seek to incorporate a document
5 into the complaint “if the plaintiff refers extensively to the document or the document forms the
6 basis of the plaintiff’s claim.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). To
7 qualify as “extensively referenced,” a document must be cited at least more than once or be
8 quoted from at length. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018).
9 To form the basis for a claim, the document must serve as the foundation for an element of the
10 claim. *Id.* Exhibits 3, 5, and 6 satisfy both of these grounds for incorporation.

11 The 3taps Amended Complaint refers to the hiQ Complaint (Exhibit 3) in paragraphs 4,
12 10, and 14. *See* Am. Comp. ¶¶4, 10, 14. Specifically, Paragraphs 4 and 10 state that 3taps
13 intends to scrape in the same fashion and therefore seeks the same declaratory judgment that hiQ
14 is seeking against LinkedIn in *hiQ Labs, inc. v. LinkedIn Corp.*, and paragraph 14 recounts that
15 hiQ filed its complaint against LinkedIn on June 7, 2017, seeking a declaration that its scraping
16 activities would not violate the CFAA. *Id.* These multiple references to Exhibit 3 are sufficient
17 grounds to incorporate it into the Amended Complaint. *See Khoja*, 899 F.3d at 1002.

18 The correspondence in Exhibits 5 and 6 is referenced extensively in 3taps’s Amended
19 Complaint, cited and quoted in no fewer than seven paragraphs. Am. Comp. ¶¶2-3, 17-18, 23, 27,
20 32. These are also incorporated by reference. *See Khoja*, 899 F.3d at 1002. Further, 3taps
21 asserts that alleged statements in these letters are the source of the actual controversy of an
22 imminent and concrete nature upon which Article III jurisdiction rests. *See* Am. Comp. ¶¶23, 27,
23 32. Because 3taps’s assertion of Article III jurisdiction is premised on statements allegedly made
24 in these letters, the entirety of the letters—not just the alleged statements 3taps cherry-picked in its
25 Amended Complaint—are properly incorporated into the Amended Complaint. *See Khoja*, 899
26 F.3d at 1002 (“The [incorporation by reference] doctrine prevents plaintiffs from selecting only
27 portions of documents that support their claims, while omitting portions of those very documents
28 that weaken—or doom—their claims.”).

1 **II. EXHIBITS 1-4 & 7-8 ARE ALSO JUDICIALLY NOTICEABLE UNDER FRE**
 2 **201(B).**

3 The Court should also take judicial notice of Exhibits 1-4 & 7-8 pursuant to Federal Rule
 4 of Evidence 201(b). Under Rule 201(b), a court may take judicial notice of matters that are either
 5 “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily
 6 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
 7 201(b). A court “must take judicial notice if a party requests it and the court is supplied with the
 8 necessary information.” Fed. R. Evid. 201(c)(2). A court may take judicial notice of matters of
 9 public record. *Khoja*, 899 F.3d at 999. Following this rule, courts routinely take judicial notice
 10 of documents on file in federal or state courts. *See, e.g., Harris v. Cty. of Orange*, 682 F.3d 1126,
 11 1131-32 (9th Cir. 2012) (taking judicial notice of a declaration filed by a defendant in a prior
 12 litigation).

13 Exhibits 1-4 & 7-8 are all documents filed in court proceedings. Exhibit 1 is a copy of a
 14 final judgment and permanent injunction filed in *Craigslist, Inc. v. 3taps, Inc. et al.* Exhibit 2 is a
 15 copy of the first amended complaint filed in *Craigslist, Inc. v. 3taps, Inc. et al.* Exhibit 3 is a
 16 copy of the complaint filed in *hiQ Labs, Inc. v. LinkedIn Corp.*, which is referenced in 3Taps’s
 17 Amended Complaint. Exhibit 4 is a copy of an order from this Court granting a preliminary
 18 injunction in *hiQ Labs, Inc. v. LinkedIn Corp.* Exhibit 7 is a copy of an administrative motion to
 19 consider whether cases should be related filed in *hiQ Labs, Inc. v. LinkedIn Corp.* Exhibit 8 is a
 20 copy of an order from this Court granting an administrative motion to consider whether cases
 21 should be related filed in *hiQ Labs, Inc. v. LinkedIn Corp.* As documents filed in a court
 22 proceeding these Exhibits are properly the subject of judicial notice because such documents are
 23 “matters of public record” and “not subject to reasonable dispute.” *Harris*, 682 F.3d at 1131-32.
 24 Accordingly, the Court can properly consider these filings and court orders. *See Certainteed*
 25 *Gypsum, Inc. v. Pac. Coast Bldg. Prod., Inc.*, No. 19-CV-00802-LHK, 2021 WL 1405477, at *4
 26 (N.D. Cal. Apr. 14, 2021) (“Court records or proceedings in other cases are matters of public
 27 record, and therefore the proper subject of judicial notice.”). Further, LinkedIn is seeking notice
 28 of Exhibits 1-4 & 7-8 only to establish their content and that they were filed, and not for purposes
 of the truth of any allegation contained therein. *See Lee*, 250 F.3d at 689.

CONCLUSION

For the reasons set forth above, LinkedIn respectfully requests that the Court notice the Exhibits attached hereto for consideration in connection with LinkedIn's motion to dismiss.

Dated: December 7, 2021

Orrick, Herrington & Sutcliffe LLP

By: /s/ Annette L. Hurst
ANNETTE L. HURST
Attorneys for Defendant
LinkedIn Corporation